

United States Bankruptcy Court
Eastern District of Michigan
Southern Division

In re:

Ci Qing Zhou,

Debtor.

Case No. 04-41718-R

Chapter 7

Yun Zhong Qui a/k/a John Qui,
Plaintiff,

v.

Adv. No. 04-4400

Ci Qing Zhou a/k/a Ci Zhou,
Defendant.

Opinion Regarding Defendant's Motion for
Summary Judgment and Plaintiff's Motion for
Determination of Effect of Prior Jury Verdict

This matter is before the Court on the defendant's motion for summary judgment and the plaintiff's motion for a determination of the effect of a prior jury verdict. The Court conducted a hearing on April 18, 2005, and took the matter under advisement.

I.

On December 1, 2000, the plaintiff filed a complaint against the defendant in Wayne County Circuit Court alleging defamation, malicious prosecution, abuse of process and intentional infliction of emotional distress. The plaintiff and defendant were co-workers at the City of Detroit Water Department. The complaint alleged that the defendant harassed the plaintiff by filing false complaints with human resources alleging that the plaintiff sexually assaulted her and stole her green card and money. The complaint further alleged that the defendant filed a false police report against

the plaintiff alleging that he broke into her house and raped her.

On February 26, 2002, the defendant filed a motion for summary judgment in the state court. On August 16, 2002, the state court granted the motion with respect to the defamation claims that pre-dated 1999, the defamation claims with regard to any statements made to police or in court, and the malicious prosecution claims. The court denied the motion with respect to the abuse of process and intentional infliction of emotional distress claims. (See Order, Def's Br. Ex. B.)

On October 16, 2002, the trial court issued a default judgment against the defendant because her attorney failed to appear for a pre-trial conference. A jury trial was conducted on the issue of damages. The defendant was ordered to pay \$139,200 in damages and attorney costs. The defendant filed an appeal.

On January 22, 2004, while the appeal was still pending in state court, the defendant filed for chapter 7 relief. On April 14, 2004, the plaintiff filed this complaint objecting to the discharge of debt under 11 U.S.C. § 523(a)(6) and to the discharge under § 727(a)(2) and (a)(4).

On September 14, 2004, the court of appeals reversed the trial court's default judgment and the trial court's denial of the motion for summary judgment on the abuse of process claim. (See Opinion, Def's Br. Ex. C.)

II.

In support of his motion for determination of effect of prior jury verdict, the plaintiff asserts that the jury verdict was not vacated, only the portion regarding liability was. Therefore, although liability is yet to be determined, the plaintiff argues that the amount of damages was set by the jury trial in the state court and is res judicata. The plaintiff also contends that to the extent the defendant's appeal was pursued post-petition, it violated the automatic stay and, therefore, the

appellate decision reversing the trial court is void.

The defendant argues that the automatic stay does not prevent a debtor from pursuing an appeal which the debtor had initiated prior to filing for bankruptcy. The defendant also asserts that the jury verdict was vacated because the appellate court dismissed the abuse of process claim of which a part of the jury verdict was based. Further, the defendant argues that the appellate court did not state that the jury verdict was to stand.

In support of her motion for summary judgment, the defendant contends that she has a long history of mental illness. She provided a summary of recent medical records and an affidavit from her psychiatrist. (See Def's Br. Ex. D and E.) The defendant's psychiatrist states that in his opinion, the defendant's mental illness precludes her from developing the requisite intent to intentionally cause anyone harm.

With respect to the defamation claim arising from complaints that the defendant allegedly made to co-workers that the plaintiff had sexually assaulted her, the defendant contends that these statements are privileged, unless the plaintiff can prove that the defendant acted with actual malice. Because there is no proof of actual malice, the defendant contends that this claim must be dismissed. Further, the defendant contends that the plaintiff suffered no actual damages and therefore cannot recover.

The defendant contends that the intentional infliction of emotional distress claim must be dismissed as well. The defendant asserts that her conduct did not rise to the level of extreme and outrageous conduct. Further, she argues that intent cannot be established because of her mental illness. She also contends that the plaintiff has failed to show that he suffered severe emotional distress.

The plaintiff argues that the defendant intentionally harassed and tormented him because he was not a supporter of the Communist party in China and the defendant was. The plaintiff further contends that the defendant's personal motivations relate to her denial of a promotion. The plaintiff argues that although the defendant relies on her alleged mental illness as a defense, her illness has not prevented her from holding a job as an engineer, obtaining a masters degree and actively participating in her defense.

The plaintiff contends that as a result of the defendant's harassment, he has suffered real damages. He asserts that he was admitted to the hospital with chest pains that the doctors attributed to stress. He further asserts that he has missed work due to stress and sleeplessness, co-workers have treated him differently, and the situation has affected his job performance. The plaintiff contends that he has been forced to stop tutoring math students because of lack of concentration. Further, he states that he has received counseling services and he is currently under the care of a psychiatrist.

The plaintiff's attorney provided an affidavit stating that he intends to retain an expert witness who will refute the testimony of the defendant's psychiatrist.

III.

11 U.S.C. § 362(a)(1) provides:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title operates as a stay, **applicable to all entities**, of--

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. § 362(a) (emphasis added).

Thus, the automatic stay operates as a stay “applicable to all entities,” including the debtor, of the continuation of a proceeding against the debtor. *In re Stinson*, 221 B.R. 726, 730 (Bankr. E.D. Mich. 1998) (“Given the dual purposes of the stay, it is appropriate that the universe of entities that are stayed is all-inclusive.”). *See also Official Unsecured Creditors Comm. v. Cushman & Wakefield of Penna, Inc. (In re Shapiro)*, 124 B.R. 974, 981 (Bankr. E.D. Pa. 1991).

Thus, the continuation of the appeal did technically violate the automatic stay because it was the continuation of an action against the debtor. However, the plaintiff does not have standing to assert a violation of the automatic stay. The automatic stay is for the benefit of the debtor. Other parties cannot assert a violation of the stay for their advantage. *See Tilley v. Vucurevich (In re Pecan Groves of Arizona)*, 951 F.2d 242, 245 (9th Cir. 1991) (Section 362 is intended solely to benefit the debtor estate.); *James v. Washington Mutual Savings Bank (In re Brooks)*, 871 F.2d 89, 90 (9th Cir. 1989) (Only the designated beneficiary of the stay has standing to bring an action declaring a violation of stay void.); *Hadsell v. Philadelphia Life Ins. Co. (In re Fuel Oil Supply and Terminating, Inc.)*, 30 B.R. 360, 362 (Bankr. N.D. Tex. 1983) (“The automatic stay is for the benefit of the debtor and if it chooses to ignore stay violations other parties cannot use such violations to their advantage.”).

Accordingly, the Court concludes that the plaintiff does not have standing to assert that the appellate decision is void because it violated the automatic stay.

The appellate decision reversed the trial court’s default judgment and reversed the trial court’s denial of summary judgment on the abuse of process claim. Therefore, the abuse of process claim is dismissed. The plaintiff argues that the jury determination on the damages amount should

stand and that the only matter left for trial is the liability of the defendant. However, there is no support for this position. The damages amount presumably included damages on the abuse of process claim, which has been dismissed. Further, because the judgment was a default judgment, the jury likely did not hear any evidence regarding the defendant's defenses, which could have affected the jury award. Accordingly, the Court concludes that the damages award was vacated as well.

The only claims that remain are the defamation claim for statements occurring after December 1999 (except with regard to statements made to police or in court) and the intentional infliction of emotional distress claim.

IV.

A.

11 U.S.C. § 523(a)(6) provides:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt--

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity.

11 U.S.C. § 523(a)(6).

The willful and malicious standard is a stringent one, and “debts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6).” *Kawaauhau v. Geiger*, 523 U.S. 57, 64, 118 S. Ct. 974 (1998). “[U]nless the actor desires to cause [the] consequences of his act, or . . . believes that the consequences are substantially certain to result from it, he has not

committed a willful and malicious injury as defined under § 523(a)(6).” *Kennedy v. Mustaine (In re Kennedy)*, 249 F.3d 576, 580 (6th Cir. 2001).

The debt here allegedly arose out of the defendant’s defamation of the plaintiff and the defendant’s intentional infliction of emotional distress. Debts arising out of these types of misconduct can satisfy the willful and malicious injury standard. *See Gonzalez v. Moffitt (In re Moffitt)*, 252 B.R. 916 (B.A.P. 6th Cir. 2000) (intentional infliction of emotional distress); *Kennedy*, 249 F.3d at 576 (defamation).

B.

The elements of a claim of defamation are (1) a false and defamatory statement concerning the plaintiff, (2) an unprivileged publication to a third party, (3) fault amounting to at least negligence on the part of the publisher, and (4) either actionability of the statements irrespective of special harm, or the existence of special harm caused by the publication. *Smith v. Fergan*, 450 N.W.2d 3, 4 (Mich. App. 1989) (citing *Hodgins Kennels, Inc. v. Durbin*, 429 N.W.2d 189 (Mich. App. 1988)).

The defendant contends that any statements she made to her employer and other employees regarding sexual assaults by the plaintiff were made under a qualified privilege. “The elements of qualified privilege are (1) good faith; (2) an interest to be upheld; (3) a statement limited in scope to this purpose; (4) a proper occasion; and (5) publication in a proper manner and to proper parties only.” *Smith*, 450 N.W.2d at 4-5 (citing *Bufalino v. Maxon Bros., Inc.*, 117 N.W.2d 150, 157 (Mich. 1962)). “A plaintiff may overcome a qualified privilege only by showing that the statement was made with actual malice, i.e., with knowledge of its falsity or reckless disregard of the truth.” *Smith*, 450 N.W.2d at 5.

The defendant contends that the plaintiff cannot introduce any evidence proving that the defendant published the accusation of sexual assault with actual malice. The defendant relies on her medical reports and the affidavit from her doctor stating that she could not have developed the requisite intent to intentionally cause anyone harm because she has been diagnosed with chronic paranoid schizophrenia. This affidavit also stated that the debtor “is not in touch with reality. . .” However, her doctor’s affidavit was completely contradicted by the defendant’s own testimony at a hearing held on the Court’s order to show cause why the case should not be dismissed, held on May 17, 2005. At that hearing the Court observed that the debtor was completely in touch with reality, knew that she had filed bankruptcy and, most importantly, knew why she had filed bankruptcy. Accordingly, the Court concludes that there are genuine issues of material fact as to whether the defendant acted with actual malice.

C.

There are four elements required to make up a prima facie claim of intentional infliction of emotional distress: (1) extreme and outrageous conduct; (2) intent or recklessness; (3) causation; and (4) severe emotional distress. *Roberts v. Auto-Owners Ins. Co.*, 374 N.W.2d 905, 908 (1985). The *Roberts* court underscored the high threshold for extreme and outrageous conduct:

It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by “malice”, or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his

resentment against the actor, and lead him to exclaim, “Outrageous!”

Id. at 602-03.

The defendant contends that her actions did not rise to the level of extreme and outrageous conduct. However, the Court concludes that making false allegations of rape against a co-worker can rise to the level of extreme and outrageous conduct. Further, there are genuine issues of material fact as to whether the defendant acted with the requisite intent. Accordingly, the defendant’s motion for summary judgment is denied.

V.

In conclusion, the appellate court’s reversal of the trial court decision is valid, the prior jury verdict was vacated, and the abuse of process claim is dismissed. Further, the defendant’s motion for summary judgment with respect to the defamation claim and the intentional infliction of emotional distress claim is denied.

The Court will enter an appropriate order.

Steven Rhodes
Chief Bankruptcy Judge

Entered: June 13, 2005

cc: Thomas R. Morris
Allen W. Ben

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